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FILED & ENTERED

SEP 11 2019

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re:

CASE NO. 2:18-BK-18712-RK

DAVIDOVICH KAUFMAN LEGAL GROUP, APA
6442 Coldwater Canyon Avenue, Suite 209
North Hollywood, California 91606
(818) 661-2420

BEN B. SAFYARI,
Debtor and Debtor-in-Possession.

CHAPTER 11

**ORDER DENYING MOTION TO
VACATE/ALTER ORDER GRANTING
CREDITOR JOE KLEIN'S MOTION TO
DISMISS BANKRUPTCY CASE AND
DISMISSING CASE WITH 180-DAY BAR
TO DEBTOR FILING A NEW
BANKRUPTCY CASE AND
CONCURRENTLY ISSUED
MEMORANDUM DECISION ON
MOTION OF CREDITOR JOE KLEIN TO
DISMISS BANKRUPTCY CASE**

DATE: September 4, 2019
TIME: 11:00 a.m.
CTRM: 1675

*[Honorable Robert N. Kwan, Judge
Presiding]*

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1 **TO ALL PARTIES AND TO THEIR ATTORNEY(S) OF RECORD HEREIN:**

2 **PLEASE TAKE NOTICE** that on September 4, 2019, a hearing was held in Courtroom
3 1675 of the above-entitled Court in the Edward R. Roybal Federal Building and US Courthouse
4 located at 255 East Temple Street – Los Angeles, California 90012, the Honorable Robert N. Kwan,
5 Judge Presiding, on Movant BEN SAFYARI's ("Debtor" or "Safyari") Motion to Vacate/Alter "Order
6 Granting Creditor Joe Klein's Motion to Dismiss Bankruptcy Case and Dismissing Case with 180-
7 Day Bar to Debtor Filing a New Bankruptcy Case" and concurrently issued "Memorandum
8 Decision on Motion of Creditor Joe Klein to Dismiss Bankruptcy Case" (the "Motion"),

9 Movant, Ben B. Safyari, was represented by his counsel Raymond H. Aver of the Law
10 Offices of Raymond H. Aver. Secured Creditor, Joe Klein, was represented by his counsel
11 Davidovich Kaufman Legal Group, APA and its attorneys Edmund J. Sherman and Niv V.
12 Davidovich.


13 The Court has considered the Motion, the Opposition filed thereto, and the Evidentiary
AUFMAN LEGAL GROUP, APA
Coldwater Canyon Avenue, Suite 200
North Hollywood, California 91606
(818) 661-2420
14 Objections filed to the Declarations of Raymond H. Aver, Ben B. Safyari, Zahera Safyari, and Glen
15 N. Newman, M.D. Prior to the hearing, the Court issued its Tentative Ruling to deny the Motion.
16 After hearing and oral argument of the parties, the Court adopts its Tentative Ruling.

17 The Court orders Secured Judgment Creditor, Joe Klein, to prepare the Order and attach a
18 copy of the Tentative Ruling (a true and correct copy of which is attached hereto as Attachment
19 "A"), as its final ruling, and for the reasons set forth therein, and for the reasons stated on the
20 record at the September 4, 2019 hearing,

21 **IT IS HEREBY ORDERED** that the Motion is denied.

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23
24 Date: September 11, 2019

25 
Robert Kwan
United States Bankruptcy Judge

ATTACHMENT "A"

Deny debtor's motion to vacate or alter final order dismissing case for the reasons stated in the opposition of creditor Joe Klein. Federal Rule of Bankruptcy Procedure 9023 makes applicable Federal Rule of Civil Procedure 59 in cases under the Bankruptcy Code, 11 U.S.C. The grounds for motions to alter or amend judgment under Federal Rule of Civil Procedure 59(e) are shown if movant demonstrates one of the following: (1) there is newly discovered evidence that could not have been discovered previously; (2) the court committed clear error or its initial decision is manifestly unjust; or (3) there is an intervening change in the controlling law. 3 Jones, Rosen, Wegner and Jones, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*, ¶ 20-300 at 20-59 (2018) (citing, inter alia, Allstate Insurance Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011)) (citation omitted). As the Ninth Circuit stated in Allstate Insurance Co. v. Herron, "amending a judgment after its entry remains 'an extraordinary remedy which should be used sparingly.'" 634 F.3d at 1111. The moving papers fail to demonstrate any of these grounds. In particular, the moving papers do not show clear error by the court in its findings of fact, nor do they show error in its conclusions of law. Debtor made material omissions of income on his bankruptcy schedules and documents including his monthly operating reports which indicate that the petition and case were filed in bad faith. The moving papers do not articulate a proper basis for relief under Federal Rule of Bankruptcy Procedure 9024 and Federal Rule of Civil Procedure 60. Debtor's remedy if he feels that the court's judgment was erroneous is to take an appeal. Appearances are required on 9/4/19, but counsel may appear by telephone.